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IN THE COURT OF APPEALS OF INDIANA

INAHUNIE M. HUNTER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 84A01-0609-CR-398
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE VIGO SUPERIOR COURT
The Honorable David R. Bolk, Judge
Cause No. 84D03-0404-FC-1094

May 18, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issues

Inahunie M. Hunter appeals the trial court's order revoking her probation and ordering the execution of two and one-half years of her four-year sentence for fraud on a financial institution, a Class C felony. Hunter asserts that she was denied the right of confrontation and that the evidence was insufficient to support the judgment. Holding that the testimony of a probation officer disclosing drug screen results was properly admitted into evidence at the probation revocation hearing, and that the evidence was sufficient to support the decision of the trial court, we affirm.

Facts and Procedural History

Hunter was charged on April 14, 2004, with fraud on a financial institution, a Class C felony. She pled guilty and was sentenced to four years at the Department of Correction. The trial court suspended the entire sentence to probation, and provided that Hunter could transfer her probation to her county of residence. As a condition of her probation, Hunter was ordered to refrain from the use of illegal drugs.

On August 30, 2005, the State filed a "Notice Of Probation Violation," alleging that Hunter tested positive for cocaine on July 12, 2005, and including a report from the drug laboratory. On February 15, 2006, the State filed a "2nd Amended Notice Of Probation Violation" alleging that Hunter tested positive for cocaine on July 12, 2005, and September 21, 2005, and for cannabinoids on November 30, 2005, and January 25, 2006; that Hunter had failed to enroll in a court-ordered drug and alcohol treatment program; and that on February 2, 2006, Hunter was in possession of a loaded .38 caliber revolver in violation of

her probation. On July 17, 2006, the State filed a "3rd Amended Notice Of Probation Violation" reiterating the previous allegations and alleging that on July 11, 2006, Hunter was arrested for neglect of a dependant, a Class D felony, possession of cocaine, a Class D felony, and visiting a common nuisance with a child, a Class A misdemeanor; and alleging that on July 11, 2006, Hunter tested positive for cocaine and admitted to an officer that she had ingested cocaine knowing that she was pregnant.

On August 17, 2006, the trial court conducted a hearing, found that Hunter had violated a term of her probation, and ordered the execution of two and one-half years of Hunter's previously suspended four-year sentence. Hunter now appeals.

Discussion and Decision

I. Standard of Review

A probation revocation hearing is civil in nature, and the State need only prove the alleged violations by a preponderance of the evidence. Cox v. State, 706 N.E.2d 547, 551 (Ind. 1999). When reviewing an appeal from the revocation of probation, we will consider all the evidence most favorable to the judgment of the trial court without reweighing that evidence or judging the credibility of witnesses. Id. If there is substantial evidence of probative value to support the trial court's conclusion that a defendant violated any terms of probation, we will affirm its decision to revoke probation. Id. "Evidence of a single probation violation is sufficient to sustain the revocation of probation." Smith v. State, 727 N.E.2d 763, 766 (Ind. Ct. App. 2000).

II. Hearsay Evidence

At Hunter's probation revocation hearing, Vigo County Chief Adult Probation Officer Michael Ellis testified that he had provided Hunter with the Rules of Probation when she was initially assigned to probation and that she signed those rules. Ellis stated that after Hunter was placed on probation in Vigo County, she transferred her probation to Marion County, her place of residence. Ellis further stated that the Marion County Probation Officer subsequently advised Ellis that while in Marion County, Hunter tested positive for cocaine and cannabinoids on several occasions. The Marion County Probation Officer was relaying information he had received from the laboratory. Hunter's hearsay objection to Ellis' testimony was overruled.

The State did not introduce any printed documentation of the failed drug screens. However, Ellis indicated to the court that he had the drug screen reports with him in his file. The trial court noted that one of the laboratory reports was attached to the original notice of probation violation, and requested that the other test results be submitted as exhibits. Ellis stated he would make copies for the court. However, the record contains no exhibits.

Hunter now contends that the admission of Ellis' statements that Hunter had failed several drug tests was hearsay evidence resulting in the denial of her right to confrontation. She complains the only evidence presented was Ellis' testimony based on information he had received from the Marion County Probation Officer based on information this officer had received from the laboratory. Hunter asserts this is "hearsay upon hearsay upon hearsay" and

not admissible. Appellant's Brief at 7. Hunter complains the State did not introduce into evidence any certified laboratory results or any affidavits from any laboratory technician.

Strict rules of evidence, other than those with respect to privileges, do not apply to proceedings relating to probation. Ind. Evidence Rule 101(c)(2). In probation revocation hearings, judges may hear and "consider any relevant evidence bearing some substantial indicia of reliability." Cox, 706 N.E.2d at 551. This includes reliable hearsay. Id. However, a person alleged to have violated the terms of his probation has a right, at the probation revocation hearing, to confrontation, cross-examination, and representation by counsel. Ind. Code § 35-38-2-3(e).

In C.S. v. State, 817 N.E.2d 1279, 1281 (Ind. Ct. App. 2004), a defendant argued that his right to confront witnesses against him was violated when his probation officer testified about a failed drug test at a dispositional hearing. Although some of the probation officer's testimony amounted to hearsay, hearsay evidence is admissible in this type of proceeding and the defendant was afforded an opportunity to cross-examine the probation officer regarding the hearsay. We stated, "[h]e confronted the probation officer and skillfully cross examined her concerning her knowledge and lack of knowledge about the test. That is what due process requires under these circumstances since the hearsay nature of the testimony was not objectionable." Id.

The trial court in the instant case allowed hearsay testimony about the failed drug tests. Ellis stated the drug tests were conducted by the Marion County Probation Department and the Marion County probation officer who was handling the case relayed the information

to him. Ellis stated the Marion County probation department periodically filed progress reports with his office and from that information, his office made the decision about whether to file a notice of probation violation. Hunter then asked Ellis about the levels on the drug tests "to give the court an indication as to when . . . illegal substances were used," tr. at 16, and Ellis stated he had copies of the tests. The court then requested the copies be made a part of the record. Hunter did not further question Ellis about his lack of knowledge of the tests and did not ask to see the reports.

Moreover, the trial court noted it had the July 12, 2005 laboratory report, which was a part of the original notice of probation violation, showing that Hunter tested positive for cocaine on that date. In Cox, the court acknowledged that the challenged exhibit (urine test results from the Witham Memorial Hospital Toxicology Laboratory) constituted hearsay but determined that the admission of such hearsay evidence did not deny the probationer his due process rights and was not erroneous. 706 N.E.2d at 549. The court clarified, "[w]e find that the use in a probation revocation hearing of a regular urinalysis report prepared by a company whose professional business it is to conduct such tests does not infringe upon a probationer's confrontation rights." Id. at 550 n.8. Here, the laboratory report of July 12, 2005, is a type of laboratory report "prepared by a company whose professional business it is to conduct such tests." Id. As such, the drug laboratory's report was substantially reliable.

Hunter was not denied her right of confrontation because she was able to confront and cross-examine the witness offering the testimony and the laboratory report was substantially reliable.

III. Sufficiency of Evidence

Hunter also asserts the evidence was insufficient to support the decision of the trial court. However, the trial court stated that its finding that Hunter violated probation was based not only on the evidence presented by the State, but also on Hunter's own testimony that she violated the conditions of her probation. During the probation revocation hearing, Hunter admitted that she had "dirty screens" on July 12, 2005, September 21, 2005, and January 25, 2006, tr. at 24, and that she tested positive for cocaine when she was six months pregnant on July 11, 2006, tr. at 26-27. As noted above, a trial court may revoke a person's probation upon evidence of the violation of any single condition of probation. See Washington v. State, 758 N.E.2d 1014, 1019 (Ind. Ct. App. 2001) (a trial court may revoke probation upon the violation of any single term of probation); Smith, 727 N.E.2d at 766. Hunter established through her own testimony that she violated her probation. Thus, the evidence was sufficient to support the trial court's revocation of Hunter's probation.

Conclusion

The trial court did not deny Hunter the right of confrontation by allowing Ellis' testimony disclosing Hunter's failed drug screen results. The evidence was sufficient to support the judgment of the trial court. The judgment of the trial court is affirmed.

Affirmed.

SULLIVAN, J., and VAIDIK, J., concur.